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Signed and Filed: December 28, 2012



*Dennis Montali*  
DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
CARL ALEXANDER WESCOTT and ) No. 12-30143DM  
MONETTE ROSEMARIE STEPHENS, ) Chapter 7  
Debtors. )  
\_\_\_\_\_  
JANINA M. HOSKINS, TRUSTEE IN ) Adversary Proceeding  
BANKRUPTCY OF THE ESTATE OF ) No. 12-3148DM  
CARL ALEXANDER WESCOTT and )  
MONETTE ROSEMARIE STEPHENS, )  
Plaintiff, )  
v. )  
CARL ALEXANDER WESCOTT and )  
MONETTE ROSEMARIE STEPHENS, )  
Defendants. )  
\_\_\_\_\_

SCHEDULING ORDER FOR:

[X] TRIAL IN ADVERSARY PROCEEDING  
[ ] FINAL HEARING ON MOTION FOR RELIEF FROM STAY  
[ ] TRIAL ON OBJECTIONS TO CLAIM  
[ ] HEARING ON OBJECTIONS TO CONFIRMATION OF CHAPTER \_\_\_ PLAN  
[ ] OTHER:

Trial Scheduling Order  
Revised July, 2011

1            A Status Conference in this adversary proceeding  
2            A preliminary hearing on this motion for relief from stay  
3            A hearing regarding objections to claim  
4            A prehearing conference regarding objections to  
5            confirmation of plan  
6            Other: \_\_\_\_\_

7           was held on December 28, 2012.

8           Appearances were as follows:

9            For plaintiff Janina M. Hoskins, Trustee in Bankruptcy of  
10           the Estate of Carl Alexander Wescott and Monette Rosemarie  
11           Stephens ("Plaintiff"),

12           Jean Barnier, Esq. ;

13            For defendant Carl Alexander Wescott ("Defendant"),  
14           Howard L. Hibbard, Esq. ;

15            For defendant Monette Rosemarie Stephens ("Defendant"),  
16           Sheila Gropper Nelson, Esq. ;

17            For Debtor(s): \_\_\_\_\_;

18            For Moving Party: \_\_\_\_\_

19           \_\_\_\_\_ ;

20            For Trustee: \_\_\_\_\_ ;

21            For Creditor: \_\_\_\_\_ ("Creditor"),  
22           \_\_\_\_\_ ;

23            For United States Trustee: \_\_\_\_\_ ;

24            Other(s): \_\_\_\_\_  
25           \_\_\_\_\_ .

26           Upon due consideration, the court hereby enters the following  
scheduling order.

27           **TRIAL.** The trial or hearing ("Trial") on the above matter(s)  
28           will commence on the Date and Time of Trial, set forth below, at

29           Trial Scheduling Order  
30           Revised July, 2011

1 the United States Bankruptcy Court, 235 Pine Street, Twenty-Second  
2 Floor, San Francisco, CA 94104. The Time Reserved for Trial is  
3 also shown below. During the week prior to the Trial, the court  
4 may move the starting time or day. The court's Calendar  
5 Clerk/Courtroom Deputy will advise the parties of any such change  
6 by telephone. **All parties are cautioned to be prepared to adjust**  
7 **their schedules accordingly.**

8 **MOTIONS.** Unless otherwise ordered, (a) motions to join other  
9 parties and to amend the pleadings must be filed not later than **30**  
10 days after entry of this scheduling order and (b) motions for  
11 summary judgment must be heard no later than **30** calendar days  
12 before the Date and Time of Trial.

13 **DISCOVERY.** Discovery shall be completed by the Discovery  
14 Deadline shown below. Completion means that depositions must be  
15 concluded, although not necessarily transcribed. As to written  
16 and production discovery, responses must be due before the  
17 Discovery Deadline. The court will attempt to resolve all  
18 discovery disputes on an expedited basis via telephonic  
19 conference, which any party may initiate by request to the court's  
20 Calendar Clerk/Courtroom Deputy and notice to the other party  
21 after they have met and conferred and made a good faith effort to  
22 resolve the dispute. The party requesting the conference should  
23 submit a brief letter explaining the issues to be presented.

24 The Discovery Deadline may be extended by the parties by  
25 agreement, without an order of the court.

26 **EVIDENCE.** On motions for relief from stay, testimonial

1 evidence at the Trial must be presented by written declaration(s)  
2 or deposition excerpt(s), unless the court by order allows oral  
3 testimony. B.L.R. 4001-1(e). Any motion for permission to  
4 introduce any oral testimony (including by cross-examination of  
5 the other party's declarant(s) or deponent(s)) shall be filed and  
6 served (with chambers copies provided) no later than **14** calendar  
7 days before the Date and Time of Trial and shall include the names  
8 of the witnesses, the subject of their expected testimony, and,  
9 where applicable, a statement of the reasons why the testimony  
10 cannot properly be introduced by declaration(s) or deposition  
11 excerpt(s). Any opposition shall be filed and served (with  
12 chambers copies provided) no later than **10** calendar days before  
13 the Date and Time of Trial. The court will rule on the motion  
14 without a hearing. No such motion is required for cross-  
15 examination or redirect examination of expert witnesses.

16 Except on motions for relief from stay, declarations of non-  
17 expert witnesses will not be considered except by stipulation of  
18 the parties.

19 **PRE-TRIAL SUBMISSIONS.** Not later than **7** calendar days before  
20 the Date and Time of Trial, each party shall:

21 (a) File and serve a trial brief, which shall include a  
22 summary of the facts to be proven and the legal theories on which  
23 the party relies. Briefs shall not exceed **15** pages without prior  
24 permission of the court. The court will not normally request or  
25 permit post-trial briefs.

26 (b) Except for motions for relief from stay, file and

1 serve a witness list, including a brief summary of the anticipated  
2 testimony from each witness. If a party to the matter will be  
3 called as a witness (even as an adverse witness) that party's name  
4 must be included on the witness list. The presence of a witness'  
5 name on the witness list is to alert the court and the other side  
6 that the witness may be called. It does not mean that that person  
7 will be called. Accordingly, each party is responsible for  
8 ensuring the attendance of every witness the party intends to  
9 call, whether or not named by the other side. Except in  
10 exceptional circumstances, and absent consent by the other side, a  
11 party will not be allowed to call a witness not named on that  
12 party's witness list. This subparagraph shall not apply to expert  
13 witnesses or their testimony.

14 (c) On motions for relief from stay, file and serve  
15 (i) a notice identifying any declaration(s), deposition excerpt(s)  
16 or memoranda previously filed in connection with the preliminary  
17 hearing and (ii) any additional declarations the party wishes the  
18 court to consider.

19 (d) File and serve a list of exhibits (other than those  
20 to be used for impeachment or rebuttal) and exchange, but not  
21 file, copies of all exhibits the party intends to introduce into  
22 evidence. Any paper(s) in the court's file of which a party  
23 intends the court to take judicial notice, or other facts that are  
24 proper for judicial notice under Fed. R. Evid. 201, must be  
25 reproduced and included as an exhibit(s). Copies of the  
26 declarations filed and served in accordance with this order shall

1 be marked as exhibits in the manner described herein. All  
2 exhibits are to be premarked for identification.

3                   In adversary proceedings, Plaintiff's exhibits should be  
4 marked by number and defendant's exhibits should be marked by  
5 letter. On motions for relief from stay and other contested  
6 matters initiated by motion, Moving Party's exhibits should be  
7 marked by number and Respondent's, Debtor's or Trustee's exhibits  
8 should be marked by letter. On objections to claim(s) and  
9 objections to confirmation of plans, Creditor's exhibits should be  
10 marked by number and Debtor's or Trustee's exhibits should be  
11 marked by letter.

12                   Each page of any exhibit that has more than one page is  
13 to be numbered consecutively. The parties shall bring to Trial  
14 copies of all exhibits for opposing counsel, the witnesses and the  
15 court, together with an exhibit list. If a party has more than 10  
16 exhibits, the exhibits should be placed in a three-ring binder  
17 with a tab for each exhibit and the exhibit list placed at the  
18 front of the binder.

19                   **EXPERTS.** The presentation of expert testimony at Trial  
20 shall be governed by the following:

21                   (a) Direct evidence shall be presented by a declaration  
22 that authenticates the report of the expert. See FRCP  
23 26(a)(2)(B), incorporated via Fed. R. Bankr. P. 7026. Each party  
24 shall file and serve declarations of experts and other documentary  
25 evidence related thereto no later than 30 calendar days prior to  
26 the Discovery Deadline; provided, however, on motions for relief

1 from stay, such declarations shall be filed and served no later  
2 than **14** calendar days prior to the Date and Time of Trial.

3 (b) To cross-examine an opposing party's expert  
4 declarant, a party shall notify the opposing party in writing or  
5 by e-mail at least **3 court** days before the Date and Time of Trial,  
6 in which case the declarant will be required to attend the Trial.  
7 Any party who fails to notify the opposing party will not be  
8 permitted to cross-examine the opposing party's expert. Any party  
9 who requests the right to cross-examine an expert and then does  
10 not do so will be expected to reimburse the opposing party no less  
11 than the expenses incurred in producing the expert at the Trial.

12 **PRE-TRIAL OBJECTIONS.** Promptly after receipt of the items  
13 mentioned in **PRE-TRIAL SUBMISSIONS**, above, each party must advise  
14 the opposing party of any objections to the introduction of  
15 testimony or exhibits. Parties must meet and confer before Trial  
16 to attempt to reach agreement regarding admissibility. The court  
17 expects the parties to make good faith efforts to resolve all  
18 evidentiary issues.

19 **MOTIONS IN LIMINE.** If efforts to resolve disputes regarding  
20 the introduction of testimony or exhibits are unsuccessful,  
21 motions in limine should be filed and served no later than **4 court**  
22 days before the Date and Time of Trial. Such motions should  
23 include a certification that the moving party has complied in good  
24 faith with the meet and confer requirements of the preceding  
25 paragraph. Opposition should be filed and served no later than **1**  
26 **court** day before the Date and Time of Trial.

1       Copies of motions and oppositions should be delivered or  
2 faxed directly to Chambers. Motions in limine will be heard at  
3 the commencement of Trial.

4       **STIPULATIONS.** At the commencement of Trial, the parties must  
5 be prepared to stipulate into evidence all exhibits that are  
6 admissible for at least one purpose. Bona-fide objections may be  
7 reserved, with the issue of admissibility deferred until the  
8 exhibit is offered into evidence.

9       **ORDER OF PRESENTATION AT TRIAL.** Unless otherwise agreed by  
10 the parties or ordered by the court, Plaintiffs in adversary  
11 proceedings, moving parties on motions for relief from stay, and  
12 claimants on objections to claims will present their cases-in-  
13 chief first. On objections to confirmation of plans, debtors or  
14 other plan proponents will present their cases-in-chief first.

15       **IMPEACHMENT AND REBUTTAL WITNESSES.** The requirement of  
16 advance identification of witnesses and production of exhibits  
17 does not apply to witnesses and exhibits presented for purposes of  
18 impeachment or rebuttal.<sup>1</sup> This paragraph supercedes the expert  
19 disclosure procedure of FRCP 26(a)(2)(D)(ii), incorporated via  
20 Fed. R. Bankr. P. 7026.

21       **NOTICE TO COURT.** No later than the Monday of the week prior

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23       <sup>1</sup> The proper function of rebuttal evidence is to contradict,  
24 impeach or defuse the impact of the evidence offered by an adverse  
25 party. Testimony offered only as additional support to an argument  
made in a case in chief is improper on rebuttal. Peals v Terre  
Haute Police Dept., 535 F.3d 621, 630 (7th Cir. 2008); see also Daly  
v. Far Eastern Shipping Co., 238 F.Supp.2d 1231, 1238 (W.D. Wash.  
2003), aff'd 108 Fed. Appx. 476 (9th Cir. 2004).

1 to the Date and Time of Trial, counsel for: Plaintiff (in an  
2 adversary proceeding); Moving Party (on a motion for relief from  
3 stay); and the Debtor or Trustee (on objections to claim or  
4 objection to plan confirmation) **must** telephone or e-mail the  
5 court's Calendar Clerk/Courtroom Deputy, Ms. Lorena Parada (415-  
6 268-2323; Lorena\_Parada@canb.uscourts.gov) and report: whether the  
7 parties intend to go forward with the Trial as scheduled; if  
8 settlement is likely; whether the time reserved for the Trial is  
9 realistic; and any other relevant information.

10        **NON-COMPLIANCE.** Any failure of a party to comply timely with  
11 this scheduling order may result in judgment against such party,  
12 removal of the Trial from calendar, exclusion of evidence or  
13 imposition of monetary or non-monetary sanctions. See FRCP  
14 16(f)(1)(C), incorporated via Fed. R. Bankr. P. 7016.

DATE AND TIME OF TRIAL: June 3, 2013, at 9:30 a.m.

TIME RESERVED FOR TRIAL: One Day

DISCOVERY DEADLINE: May 3, 2013

OTHER PROVISIONS: A status conference will be held on February 22, 2013.

\*\*\*END OF ORDER\*\*\*

COURT SERVICE LIST

2 Howard L. Hibbard, Esq.  
3 Law Office of Howard L. Hibbard  
251 Park Rd., Ste. 800  
Burlingame, CA 94010

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## Trial Scheduling Order Revised July, 2011

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